

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ALFRED D. AGPAOA, et al.,  
Plaintiffs,

CASE NO. 09-CV- 1387 W (POR)

SECURED BANKERS MORTGAGE  
COMPANY, et al

**ORDER GRANTING  
DEFENDANTS' MOTION TO  
DISMISS (DOC. 4)**

## Defendants

Pending before the Court is a motion to dismiss filed by Defendants Bank of America Home Loans, and Reconstruct Company, N.A. (Doc. 4). Plaintiffs have not opposed.

Civil Local Rule 7.1(f.3.c) provides that “[i]f an opposing party fails to file papers in the manner required by Local Rule 7.1(e)(2), that failure may constitute a consent to the granting of that motion or other ruling by the court.” The Ninth Circuit has held that a district court may properly grant a motion to dismiss for failure to respond. See generally Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995) (per curiam) (affirming dismissal for failure to file timely opposition papers where plaintiff had notice of the motion and ample time to respond).

Here, based on the hearing date, Plaintiffs' opposition was due on or before September 4, 2009. Plaintiffs, however, did not file an opposition and have not

1 requested additional time to do so. Moreover, there is no evidence before the Court that  
2 Defendants' moving papers failed to reach the mailing address designated in Defendants'  
3 Proof of Service or that Plaintiffs were not aware of the pending motion. Relying on  
4 Civil Local Rule 7.1(f.3.c), the Court deems Plaintiffs' failure to oppose Defendants'  
5 motion as consent to its merits.

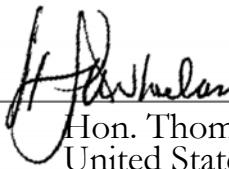
6 In light of the foregoing, Defendants' motion to dismiss (Doc. 4) is **GRANTED**  
7 **WITH LEAVE TO AMEND.** Plaintiffs' amended complaint, which cures the  
8 deficiencies identified in Defendants' motion, must be filed on or before December 2,  
9 2009.

10 Plaintiffs are further cautioned that failure to comply with this order or to respond  
11 to any future motions to dismiss may result in dismissal with prejudice.

12 **IT IS SO ORDERED.**

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14 DATED: November 2, 2009

15   
16 Hon. Thomas J. Whelan  
17 United States District Judge

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